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11 *Attorneys for Defendant and  
Counterclaimant, Cisco Systems, Inc.*

12 **IN THE UNITED STATE DISTRICT COURT**  
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 ALLPLUS COMPUTER SYSTEMS CORP.,

Case No. 4:21-cv-00918-KAW

16 Plaintiff,

**DEFENDANT AND COUNTERCLAIMANT  
CISCO SYSTEMS, INC.’S OPPOSITION TO  
ALLPLUS COMPUTER SYSTEMS CORP.’S  
MOTION FOR JUDGMENT ON THE  
PLEADINGS**

17 v.

18 CISCO SYSTEMS, INC.,

19 Defendant.

20 Date: August 5, 2021 at 1:30 p.m.

21 CISCO SYSTEMS, INC.,

Hon. Kandis Westmore

22 Counterclaimant,

23 v.

24 ALLPLUS COMPUTER SYSTEMS CORP.,

25 Counterdefendant.

1        **I. INTRODUCTION**

2        The Court should deny AllPlus Computer Systems Corp.’s (“AllPlus”) Motion for Judgment on  
 3 the Pleadings Against Defendant/Counterclaimant Cisco Systems, Inc. (“Cisco”). AllPlus’s motion  
 4 misapprehends the law and ignores the well-pleaded factual allegations in Cisco’s Counterclaim.

5        Cisco’s breach-of-counterclaim survives because the Guarantee AllPlus entered and now seeks to  
 6 invalidate is valid and enforceable. After entering into the Guarantee, Cisco increased AllPlus’s line of  
 7 credit and extended the Cisco/AllPlus distributorship. Those acts qualify as valid consideration, thwarting  
 8 AllPlus’s suggestion that the Guarantee was not a valid contract.

9        Even if that were not the case, Cisco’s Counterclaim pleads a valid claim for promissory estoppel,  
 10 making dismissal of the Counterclaim inappropriate. Further, the pleadings—read as a whole—reveal  
 11 issues of disputed material fact between the parties. Under Ninth Circuit precedent, those factual disputes  
 12 preclude judgment as a matter of law.

13        For each of these reasons, the Court should deny AllPlus’s motion.

14        **I. STATEMENT OF RELEVANT FACTS**

15        **A. AllPlus guaranteed the debt of its Brazilian affiliate Alcateia to Cisco, and Alcateia  
 16        defaulted, triggering AllPlus’s obligation to pay Cisco.**

17        From 2009 to 2020, Cisco and its related Brazilian entity (Cisco Comercio e Servicos de Hardware  
 18 e Software do Brasil Ltda. (“Cisco Brazil”)) and AllPlus and its related Brazilian entities (Alcateia  
 19 Distribuidora Ltda., Alcateia Engenharia de Sistemas Ltda., and Abano RJ Distribuidora Ltda.  
 20 (collectively, “Alcateia”)) had a business relationship. Specifically, AllPlus and Alcateia imported and  
 21 sold Cisco products in Brazil. Dkt. No. 36 at 6:26 - 7:15 (First Am. Ans. & Counterclaim of Def’t Cisco  
 22 Sys., Inc. (“FAAC”)). During this period, Cisco, AllPlus, and Alcateia operated under a Distributor  
 23 Agreement that the parties periodically renewed and reentered. Dkt. No. 36-1 at 7 (the Distributor  
 24 Agreement); *see also*, e.g., 36-1 at 67 (the sixth amendment to the Distributor Agreement, which among  
 25 other things, extended its term into 2020).

26        On November 30, 2016, AllPlus entered a guarantee in favor of Cisco and Cisco Brazil, where  
 27 AllPlus guaranteed the “total amount of US\$ 400,000.00 (Four Hundred Thousand Dollars)” on behalf of  
 28 Alcateia. Dkt. No. 1-1 at 11, ¶ 1 (Guarantee dated and executed by AllPlus on November 30, 2016, and  
 attached to AllPlus’s Complaint for Declaratory Relief).

1       A year later, on November 22, 2017, AllPlus entered another guarantee in favor of Cisco and Cisco  
 2 Brazil, this time guaranteeing “the total amount of Five Hundred Thousand Dollars (US\$ 500,000.00)” in  
 3 favor of Cisco on behalf of Alcateia. Dkt. No. 36-1 at 2, ¶ 1, and at 5 (Guarantee dated November 16,  
 4 2017, and executed by AllPlus on November 22, 2017). This brief refers to that agreement as the “2017  
 5 Guarantee.”

6       Two months after the parties entered the 2017 Guarantee, the parties agreed to extend their  
 7 distributorship. Dkt. 36-1 at 67 ¶ 1 (Exhibit 4, Amendment No. 6 to the Specialty Two Tier NonExclusive  
 8 Distributor Agreement, dated Feb. 21, 2018). Through that agreement (referred to here as the “2018  
 9 Amendment”), the parties agreed to continue their business relationship for an additional two years,  
 10 through 2020.

11       Later, Alcateia defaulted on its payment obligations, and on September 11, 2020, Cisco sent  
 12 AllPlus a letter (a) notifying AllPlus of Alcateia’s default; (b) demanding that AllPlus pay Cisco  
 13 \$219,959.64 per the Guarantee; and (c) informing AllPlus that if it did not pay, Cisco would pursue legal  
 14 remedies. Dkt. No. 36 at 7:26-28.

15       **B. AllPlus sued in Florida to invalidate the 2017 Guarantee, and Cisco transferred the  
 16 case to this Court and filed a Counterclaim.**

17       In response to Cisco’s letter, AllPlus initiated this action in the Circuit Court of the Eleventh  
 18 Judicial Circuit In and For Miami-Dade County, Florida. AllPlus sought declaratory relief to invalidate  
 19 the guarantee it entered on November 30, 2016. Dkt. No. 1-1 (Complaint for Declaratory Relief, filed  
 20 September 21, 2020). Subsequently, AllPlus amended its complaint, where, among other things, it now  
 21 requests declaratory relief from the 2017 Guarantee. Dkt. No. 1-2 at 2 ¶ 7 (Amended Complaint for  
 22 Declaratory Relief, filed October 23, 2020).

23       Cisco removed this case to federal court, transferred this case to this Court, and filed its  
 24 Counterclaim. Dkt. No. 1 (Notice of Removal); Dkt. No. 3 (Cisco’s original Answer); Dkt. No 13 (Order  
 25 granting Motion to Transfer Venue); Dkt. No. 36 (Cisco’s FAAC). The Counterclaim asserts a breach-  
 26 of-contract claim for AllPlus’s refusal to meet its obligations under the 2017 Guarantee. Dkt. No. 36 at  
 27 8:5-16. In the alternative, Cisco asserts a claim for promissory estoppel, to require AllPlus to live up to  
 28 the promises it made in the 2017 Guarantee. *Id.* at 8:19 - 9:7.

1       Hence, the operative “complaint” for the purposes of this motion is the counterclaim contained in  
 2 Cisco’s Counterclaim (Dkt. No. 36).

3       AllPlus filed this pending motion on June 14, 2021, and filed its Answer and Affirmative Defenses  
 4 to Counterclaim a week later. Dkt. Nos. 46, 51.

5 **II.    LEGAL STANDARD**

6       “Federal Rule of Civil Procedure 12(c) allows a party to move for judgment on the pleadings after  
 7 the pleadings are closed but early enough not to delay trial.” *Junkersfeld v. Per Diem Staffing Sys., Inc.*,  
 8 No. 4:18-CV-07795-KAW, 2019 WL 2247768, at \*1–2 (N.D. Cal. May 24, 2019). Where a counterclaim  
 9 is interposed, the filing of a reply to the counterclaim marks the close of proceedings.” *In re Outlaw Lab'y, LLP*, 463 F. Supp. 3d 1068, 1079 (S.D. Cal. 2020), *on reconsideration*, No. 3:18-CV-0840-GPC, 2020  
 11 WL 3840559 (S.D. Cal. July 8, 2020).

12       “[T]he same standard of review applicable to a Rule 12(b) motion applies to its Rule 12(c)  
 13 analog,’ because the motions are ‘functionally identical.’” *Junkersfeld*, 2019 WL 2247768, at \*1–2 (citing  
 14 *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989)). “A Rule 12(c) motion may thus  
 15 be predicated on either (1) the lack of a cognizable legal theory or (2) insufficient facts to support a  
 16 cognizable legal claim.” *Id.* (citing *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990)).  
 17 “When considering a motion to dismiss under Rule 12(c), the court ‘must accept all factual allegations in  
 18 the [operative pleading] as true and construe them in the light most favorable to the non-moving party.’”  
 19 *Id.* (citing *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009)). A judgment on the pleadings may only  
 20 be granted “when there is no issue of material fact in dispute, and the moving party is entitled to judgment  
 21 as a matter of law.” *Fleming*, 581 F.3d at 925. That being said, “[w]hen a court grants a Rule 12(c) motion,  
 22 leave to amend should be freely given if it is possible that further factual allegations will cure any  
 23 defect.” *Lewis v. Beneficial Cal., Inc.*, No. 4:17-CV-03575-KAW, 2018 WL 6169348, at \*2 (N.D. Cal.  
 24 Nov. 26, 2018); (citing *Somers v. Apple, Inc.*, 729 F.3d 953, 960 (9th Cir. 2013)).

25       Accordingly, the pending motion requires evaluation of the allegations in Cisco’s counterclaim,  
 26 located at Dkt. No. 36 at 5 to 9, to be accepted as true and construed in the light most favorable to Cisco.  
 27 And should the Court grant the pending motion, leave to amend should be “freely given” to cure any  
 28 defects with further factual allegations.

1           **III. ARGUMENT**

2           AllPlus's motion for judgment on the pleadings fails because Cisco's counterclaim sets forth—at  
 3 the very least—cognizable legal theories and pleads sufficient facts in support. As set forth below, the  
 4 Guarantee at issue in this case is valid, enforceable, and supported by separate consideration. And even  
 5 if the Guarantee were somehow defective, Cisco has pled a valid claim for promissory estoppel.

6           Additionally, as separate and independent grounds for denial, the motion improperly seeks  
 7 judgment as a matter of law even though the face of the pleadings reveal that material issues of fact exist.

8           **A. The Guarantee Is Valid, Enforceable, and Supported By Separate Consideration.**

9           Under California law, guarantees are creatures of statute, governed by Civil Code section 2787 *et*  
 10 *seq.* Guarantees “must be in writing,” although the writing “need not express a consideration.” Cal. Civ.  
 11 Code § 2793. Accordingly, a court may consider extrinsic evidence in determining whether a guarantee  
 12 is supported by consideration. *See* Cal. Civ. Code § 2837 (“In interpreting the terms of a contract of  
 13 suretyship, the same rules are to be observed as in the case of other contracts.”).

14           A guarantee, like other contracts, requires consideration. “Consideration consists of either a  
 15 benefit to the promisor or a detriment to the promisee. It is enough that something is promised, done,  
 16 forborne, or suffered by the party to whom the promise is made as consideration for the promise made to  
 17 him.” *Speirs v. BlueFire Ethanol Fuels, Inc.*, 243 Cal. App. 4th 969, 987 (2015).

18           Whether a guarantee requires new consideration, independent from the consideration supporting  
 19 the primary agreement, depends on timing. “A contract of guaranty made *after* the primary agreement  
 20 has been executed and the consideration supporting it has passed requires a new consideration.” *First*  
 21 *Bank & Tr. v. Rothman*, No. B148123, 2002 WL 31087841, at \*5 (Cal. Ct. App. Sept. 19, 2002) (emphasis  
 22 added) (citing *Oakland Bank of Com. v. Washington*, 6 Cal. App. 3d 793, 796 (Cal. Ct. App. 1970)). By  
 23 contrast, “if the guaranty was written and signed *before* delivery [of a note], the obligation of all the  
 24 parties to the note, including that of the guarantor, became effective at the same moment, and there was a  
 25 good consideration for the guaranty.” *Id.* (emphasis added) (citing *Kennedy & Shaw Lumber Co. v. S.S.*  
 26 *Constr. Co.*, 123 Cal. 584, 587 (1899)).

27           On November 22, 2017, AllPlus entered the 2017 Guarantee, promising to pay up to \$500,000 of  
 28 any Alcateia debt owed to Cisco. Dkt. No. 1-2 at 10 ¶¶ 1 and 7. As separate consideration in support of

1 the Guarantee, Cisco extended a \$500,000 credit line to Alcateia, replacing a previous credit line for  
 2 \$400,000. Dkt. No. 36 at 7:19; *and compare* Dkt. No. 1-1 at 11 ¶ 1 (showing that the 2016 Guarantee  
 3 covered only up to \$400,000 of Alcateia’s debt); *with* Dkt. No. 1-2 at 10, ¶ 1 (showing that the 2017  
 4 Guarantee increased AllPlus’s guarantee from \$400,000 to \$500,000 of Alcateia’s debt).

5 Accordingly, AllPlus’s own pleadings show that (1) independent consideration supports the 2017  
 6 Guarantee, and (2) that consideration postdates the 2017 Guarantee (*see* Dkt. No. 36 at 7 ¶¶ 14–16)<sup>1</sup>. The  
 7 consideration consists of a \$500,000 line of credit Cisco extended to Alcateia that replaced a previous  
 8 \$400,000 credit line with Cisco, and the two credit lines match the amounts AllPlus promised to pay on  
 9 Alcateia’s behalf through the 2016 and 2017 guarantees.

10 Even if the \$100,000 increase in credit were not sufficient consideration to support the Guarantee  
 11 —it is— additional separate consideration supports the Guarantee. Specifically, Cisco agreed, through  
 12 the 2018 Amendment, to continue doing business with Alcateia. Dkt. No. 36-1 at 67 ¶ 1; *see Arnold*  
 13 *Fashion LP v. Celeb Sales Inc.*, 172 F.3d 875 (9th Cir. 1999) (a “deadline extension provided was  
 14 sufficient and ‘material’ consideration to sustain” a guaranty) (*citing Del Riccio v. Photochart*, 124 Cal.  
 15 App. 2d 301, 312 (1954)).

16 Rather than acknowledge these plain facts, AllPlus’s motion errantly suggests that the documents  
 17 attached to the pleadings somehow contradict Cisco’s plain factual allegations. Not so. If anything, it is  
 18 AllPlus’s allegations that conflict:

19 *First*, the 2017 Guarantee makes clear that it relates to *future*, and not merely antecedent debt,  
 20 because it states that it is a “continuing guarantee.” Dkt. No. 36-1 at 3, ¶ 7 (“The Guarantor [AllPlus]  
 21 agrees that this Guarantee is a continuing guarantee”). A “continuing guarantee” is defined by statute as  
 22 “[a] guaranty relating to a *future* liability of the principal, under successive transactions, which either  
 23 continue his liability or from time to time renew it after it has been satisfied.” Cal. Civ. Code § 2814  
 24 (*emphasis added*). Hence, the 2017 Guarantee’s plain terms contradict AllPlus’s assertions that “the

25  
 26  
 27  
 28 <sup>1</sup> While the Counterclaim does not allege the date of the line-of-credit increase, documents that Cisco’s  
 counsel obtained after the Counterclaim was filed show that the line of credit was extended on November  
 26, 2017. If the Court were to grant AllPlus’s motion (which it should not), Cisco will include that date  
 in an amended counterclaim.

1 Guarantee makes crystal clear that the debt was antecedent.” (Dkt. No. 46 at 8:3-4).

2 *Second*, the documents—and AllPlus’s own pleadings and papers—show that its affiliate Alcateia  
 3 owed money to Cisco, and that AllPlus entered into the 2017 Guarantee to secure that debt. *See, e.g.*,  
 4 Dkt.1-2 at 3 ¶ 18 (the 2017 Guarantee “seeks to guaranty an antecedent *debt* of another,” referencing  
 5 Alcateia) (emphasis added). Whether or not the words “line of credit” appear in documents attached to  
 6 the pleadings doesn’t change the fact that AllPlus entered the 2017 Guarantee to secure Alcateia’s debt to  
 7 Cisco. There is no “magic words” requirement here.

8 *Third*, the two guarantees attached to AllPlus’s pleadings, taken together, show that AllPlus  
 9 entered into the 2017 Guarantee to secure a \$500,000 credit line from Cisco, representing a \$100,000  
 10 increase over Alcateia’s prior credit line of \$400,000. *Compare* Dkt. No. 1-1 at 11, ¶ 1 (showing that  
 11 circa 2016 AllPlus guaranteed up to \$400,000 of Alcateia’s debt); *with* Dkt. No. 1-2 at 10, ¶ 1 (showing  
 12 that the 2017 Guarantee increased AllPlus’s guarantee \$100,000, to \$500,000 of Alcateia’s debt).  
 13 Accordingly, Cisco’s allegations do not “conflict” with documents attached to the pleadings.

14 For each of these reasons, Cisco has properly alleged that AllPlus breached the 2017 Guarantee.  
 15 The Court should deny AllPlus’s motion.

16 **B. Cisco Adequately Pled Its Promissory Estoppel Claim In The Alternative To Its  
 17 Breach Of Contract Claim.**

18 Cisco adequately pled its promissory estoppel claim in the alternative to its breach-of-contract  
 19 claim. “Although a cause of action for promissory estoppel is inconsistent with a cause of action for  
 20 breach of contract based on the same facts . . . ‘[w]hen a pleader is in doubt about what actually occurred  
 21 or what can be established by the evidence, the modern practice allows that party to plead in the alternative  
 22 and make inconsistent allegations.’” *Fleet v. Bank of Am. N.A.*, 229 Cal. App. 4th 1403, 1413 (2014)  
 23 (citing *Mendoza v. Cont’l Sales Co.*, 140 Cal. App. 4th 1395, 1402 (2006)). “The purpose of [promissory  
 24 estoppel] doctrine is to make a promise that *lacks consideration* . . . binding under certain circumstances.”  
 25 *Boon Rawd Trading Int’l Co. v. Paleewong Trading Co.*, 688 F. Supp. 2d 940, 953 (N.D. Cal. 2010)  
 26 (emphasis added). Since the crux of AllPlus’s case is its errant claim that the Guarantee is invalid for  
 27 “lack of sufficient consideration,” Cisco’s alternative promissory-estoppel claim is appropriate and  
 28 consistent with modern legal practice. *See* Dkt. No. 1-2 at 1, ¶ 1 (AllPlus opens its operative complaint

1 asserting that the Guarantee is “invalid and unenforceable because it lacks sufficient consideration”).

2 Moreover, Cisco’s allegations satisfy the elements for promissory estoppel. Those elements are:  
 3 “(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made;  
 4 (3) [the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must  
 5 be injured by his reliance.” *US Ecology, Inc. v. State of California*, 129 Cal. App. 4th 887, 901 (2005).

6 For the first element, Cisco pled that “AllPlus promised to pay any amounts that Alcateia owed to  
 7 Cisco.” Dkt. No. 36 at 8:23-24. For the second and third elements, Cisco pled that it “reasonably,  
 8 foreseeably, and actually relied” on AllPlus’s promise “by granting Alcateia a line of credit” and “entering  
 9 into the 2018 Amendment” that extended the Distributor Agreement. *Id.* at 8:25-28. And for the fourth  
 10 element, Cisco pled it was injured when AllPlus failed to follow through on its promise to pay when  
 11 Alcateia defaulted on \$219,959.64 in outstanding bills. *Id.* at 9:3-5.

12 Additionally, AllPlus’s reliance on *JMP Sec. LLP v. Altair Nanotechnologies Inc.*, 880 F. Supp.  
 13 2d 1029 (N.D. Cal. 2012), and *Drake v. Option One Mortg. Corp.*, No. SACV0901450CJCRNBX, 2010  
 14 WL 11464891, at \*5 (C.D. Cal. Apr. 15, 2010), is misplaced.

15 *JMP* is inapposite because “no party dispute[d] that JMP’s promise to perform under the contract  
 16 [was] supported by consideration.” *See JMP Sec. LLP*, 880 F. Supp. 2d at 1041–42 (“The only thing at  
 17 issue here is under which provision of the contract JMP will be paid for its services, not whether there was  
 18 a contract for services at all or whether the promises contained in the contract were supported by  
 19 consideration”). In contrast, here, the parties dispute whether the 2017 Guarantee is valid for lack of  
 20 consideration, so the promissory estoppel claim is appropriate.

21 *Drake* does not apply because Cisco did not allege “the existence of a contract” in its promissory-  
 22 estoppel claim. *See Drake*, 2010 WL 11464891, at \*5 (C.D. Cal. Apr. 15, 2010) (“Although Plaintiffs are  
 23 free to bring a promissory estoppel claim as an alternative to a breach of contract claim, the promissory  
 24 estoppel *claim* cannot allege the existence of a contract”) (emphasis added). In contrast, Cisco’s  
 25 promissory estoppel claim makes clear that it only applies “[i]nsofar as the Court determines that the  
 26 Guarantee is not a legally enforceable contract.” Dkt. No. 36 at 8:21-22.

27 Accordingly, Cisco adequately pled its promissory-estoppel claim in the alternative to its breach-  
 28 of-contract claim. For these reasons, the Court should deny AllPlus’s motion.

1           **C. As A Separate Grounds for Denying the Motion, The Court Cannot Rule “As a**  
 2           **Matter Of Law” Because Material Facts Are At Issue.**

3           “Judgment on the pleadings is proper when the moving party clearly establishes on the face of the  
 4           pleadings that *no material issue of fact remains* to be resolved and that it is entitled to judgment as a matter  
 5           of law.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989) (emphasis  
 6           added). A review of the pleadings reveals material issues of fact that prevent this Court from ruling purely  
 7           as “a matter of law.”

8           For example, AllPlus alleges that it entered the 2017 Guarantee “to guaranty an antecedent debt of  
 9           another,” Dkt. No. 1-2 at 4, ¶ 18, whereas Cisco alleges AllPlus entered the 2017 Guarantee “so that  
 10           Alcateia could obtain a line of credit.” Dkt. No. 36 at 7:19. In other words, AllPlus alleges it guaranteed  
 11           debt that predated the 2017 Guarantee, whereas Cisco alleges the 2017 Guarantee was entered for new,  
 12           subsequent (not antecedent) debt.

13           This distinction is material. AllPlus’s theory for invalidating the 2017 Guarantee relies on the  
 14           guaranteed debt being “antecedent”. *See, e.g.*, Dkt. No. 46 at 6:12-14 (“The Guarantee Is Invalid and  
 15           Unenforceable Because It Seeks to Guarantee An *Antecedent* Debt Of Another”); at 7:21-23 (“the  
 16           Guarantee expressly seeks to guarantee Alcateia’s *antecedent* debt without any consideration from CISCO  
 17           distinct from CISCO’s original obligation under the Distributor Agreement”); at 7:27-28 (“the  
 18           consideration supporting the Distributor Agreement *had long since been exchanged and realized*.”)  
 19           (emphasis added). Further, whether the secured debt was “antecedent” could determine the dispute over  
 20           consideration: *Pacific States Savings & Loan Co. v. Stowell* held that “[a] guaranty of an *antecedent* debt  
 21           of another must be supported by a consideration distinct from the original obligation.” 7 Cal. App. 2d 280,  
 22           281 (1935) (emphasis added). The reverse is also true: If a ““guaranty was written and signed *before*  
 23           delivery [of a note] . . . there was a good consideration for the guaranty.”” *First Bank & Tr. v. Rothman*,  
 24           2002 WL 31087841, at \*5 (Cal. Ct. App. Sept. 19, 2002) (emphasis added) (citing *Kennedy & Shaw*  
 25           *Lumber Co. v. S.S. Constr. Co.*, 123 Cal. 584, 587 (1899)).

26           Accordingly, a material issue of fact exists on the face of the pleadings—whether the 2017  
 27           Guarantee is for antecedent or subsequent debt. That factual dispute precludes judgment as a  
 28           matter of law.

1                   **D. Should the Court Grant the Motion, Cisco Requests Leave to Amend to Allege**  
 2                   **Further Factual Allegations to Cure Any Deficiencies.**

3                   Should the motion be granted, Cisco respectfully requests leave to file an amended counterclaim  
 4                   to plead additional factual allegations. *See Lewis*, 2018 WL 6169348, at \*2 (“[w]hen a court grants  
 5                   a Rule 12(c) motion, leave to amend should be freely given if it is possible that further factual allegations  
 6                   will cure any defect.”). And if Cisco needs to amend, Cisco would, at a minimum, plead additional factual  
 7                   allegations consistent with the following:

- 8                   • In 2017, Alcateia ran into credit-hold issues with Cisco as its balance neared or exceeded  
 9                   the \$400,000 credit limit, and as a result, Cisco refused to ship product until the credit  
 10                  balance was paid down.
- 11                  • Two weeks before AllPlus executed the 2017 Guarantee, Alcateia and AllPlus provided  
 12                  financial statements to Cisco to demonstrate their credit worthiness, and Cisco requested a  
 13                  new guarantee with AllPlus to match the requested credit line.
- 14                  • A few days after AllPlus executed the 2017 Guarantee—in an email titled “CREDIT  
 15                  LIMIT - 500K!”—a Cisco representative congratulated Alcateia on its newly-approved  
 16                  \$500,000 credit line guaranteed by AllPlus.

17                  These factual allegations would serve to bolster Cisco’s claims, although Cisco contends its claims  
 18                  are adequately pled in their current form. Accordingly, Cisco respectfully requests that, should the Court  
 19                  grant the pending motion, Cisco be granted leave to amend its Counterclaim.

20                  Dated: June 28, 2021

21                  Respectfully submitted,

22                  s/ Isaac Walrath

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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on this 28th day of June 2021, a copy of the foregoing was filed with  
3 the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys  
4 of record.

5 /s/ Isaac Walrath

6 Isaac Walrath

7 *Attorney for Defendant Cisco Systems, Inc.*

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